A HALF TOLD TALE OF SEVEN HUNDRED YEARS AGO.

WILLIAM RENWICK RIDDELL.[1]

In the year of our Lord 1220, Henry III was king of England, a lad of thirteen though he had been king for four years, succeeding his unfortunate father John Lackland—unfortunate in his life, more unfortunate in those who have told his story.

Though the king was a child, he had eminently capable servants; not the least capable, the judges of his bench. One of these has left in mediaeval Latin, inscribed on mediaeval parchment, a record of proceedings in court which even now is of interest.

In Trinity Term of that year, William of Knapwell, the bailiff of Saher, Earl of Winchester, came before the Justices of the Bench sitting in Hertford, and lodged a complaint. The earl himself had gone on a crusade and was to die the same year at Damietta; but he had left much of his affairs in William's hands.

The complaint was that two of the earl's men, Stephen and Philip (family names were not yet common) were conducting a damsel named Matillis (Maud) along the king's highway between St. Albans and Hedge Farm (which lies a little south of St. Albans) on the Tuesday before Ascension Day, when John of Marston came with William, his brother, and some others and by force and arms took away the damsel and robbed Stephen of a cape and a counterpane, two sheets and a scapulary worth half-a-mark or more. All this Stephen offered to prove by his body as the court should consider. The complainant said that Maud was the daughter of Geoffrey of Berneville who held land of the earl, and that Geoffrey had died, so that Maud became a ward of the earl, and that the earl when he departed for Holy Land, left this part of his business to him, his bailiff.

In those days in England (as now in England and Ontario) no man but the king owned land; all inferior holders of land held their lands of the king or of some intermediate lord; and when, (speaking generally) an inferior holder—"tenant"—of land died, in those days his lord had the right of wardship over the infant children left behind. He could sell the infant in marriage; if he tendered the child a match of reasonable equality "without disparagement" the ward must accept or be mulcted in the value of the marriage, (valorem maritagii), while if the infant married without permission, double the value was forfeited, at least if a boy ventured to do so. Where the infant had

[1]Justice of the Supreme Court of Ontario.

property his wardship was profitable to the lord. Love sounded very well, but business is business.

John of Marston is sent for and gives his account of the transaction, which is as follows:

Geoffrey of Berneville had two daughters, Maud and an elder sister Alice. When Geoffrey died, the earl sold the wardship of the two girls to John of Littlebury that he might marry Alice to his son and heir John, and Maud to a younger son, Saher. Son John married Alice and had already four sons by her, but it happened that a certain church fell vacant, and Saher, preferring church promotion to married life, declined the marriage arranged for him with Maud and was admitted to the church. John, the elder son, did not like to see the property of Maud go out of the family, but desired to retain the whole of the inheritance; and accordingly placed his sister-in-law in the Abbey of Sopwell, intending to make her a nun.

When Maud discovered John's scheme, she found means to send for John of Marston, who came to her at her request. When he came, she told him that John of Littlebury and his friends desired to make a nun of her and that she did not wish to be a nun. She so talked and made love to him *(adamavit eum)* that he married her then and there in the very Abbey.

John of Littlebury came to the Abbey, and when he discovered that she had married, he, with the assistance of some of the Abbot's men, took her away toward the Abbey of St. Albans, of which his wife's nephew was Abbot. As they were thus on the way to St. Albans, John of Marston met them; and when Maud saw him she cried aloud to him and said her enemies were carrying her off by force, that they might kill her or make a nun of her. He said that numbers were against him and told her he would not fight for her; and when she heard this she slipped off her horse and ran after her husband. And that was the way he recovered his wife.

John of Marston went further in his plea. He said that afterwards John of Littlebury came with John of Shelford and others to the nunnery at Sopwell and took there a counterpane and two sheets and carried them off towards St. Albans; one Geoffrey Hopeshot, a man of Maud's, met them, and when they asked him whose man he was, he said John of Marston's and that he was on his way to the nunnery at Sopwell for a counterpane and two sheets. Thereupon John of Littlebury said the bedclothes were his and that Geoffrey was a thief. They took hold of him and bound the bedclothes on him and took him off to St. Albans. There they threw him into prison and

are actually taking proceedings against Geoffrey for stealing the very same bedclothes they now accuse John of Marston of stealing.

Accordingly John of Marston says: first, that they are taking these proceedings against him for hate and spite *(per odium et athiam);* and in any case the champion they offer, Stephen, is a hired champion, who the very day before, had fought a judicial battle at Huntingdon.

It will be seen that John of Marston was accused of two offenses, the taking away of a ward, and the theft or robbery of certain chattels. The taking away of an heiress without her consent to marry her was made a felony in the times of Henry the Seventh by 3 Hen. VII, c. 2; what the status of such an offense at the common law seems to be doubtful, at all events it was a civil wrong against the lord who had her in ward.

Then he is charged with theft of certain goods, and an appeal of battle is offered by the body of Stephen.

John of Marston puts in issue the taking away of Maud, and says it was her own act; he does not explain the synchronism of her forced journey to St. Albans and his being in the road with his brother and some friends—such things will happen; neither does he explain how Maud was able to elude her enemies who were on horseback when *sponte cecidit de equo suo et secuta fuit eundem Johannem virum suum.*

As to the alleged theft, William of Knapwell could not make an appeal regularly, that could at the time be done only by an eyewitness. The proper form would be for some one who saw the theft and who had an interest in the subject-matter to make the appeal. Stephen might do this for any chattels of his own which were alleged to be stolen, but a hired champion was not allowed in judicial combat. A man might *"pro Deo et non pro denariis"* fight for his lord, an infant, a woman, or an old or infirm man, but if he become a champion for money and this were discovered before the justices, the duel would not go on; he would be tried by a jury and if found guilty he was liable to lose foot and fist. There was one case in Essex in this very year in which one Elias Piggun had been condemned for such an offense to lose his foot and "be it known that by the action of the King's Council he is dealt with mercifully, for by law he had deserved a worse punishment."

Moreover, if an appeal were alleged by the accused to be made from spite *(odium et athia)* this was inquired into; and if it were proved, the appeal was quashed. At the present time it makes not the slightest difference what motive may induce a plaintiff to proceed at

law; his legal rights are not affected by evil motives. In laying a criminal charge the motive becomes of importance if the charge fail and the prosecutor is sued for malicious prosecution.

There were many *indicia* of *odium et athia,* amongst them, a different description of the goods, or of the place of the theft, of the thief, etc., given at another time. And so narrow was the application of that principle that a variance, now of no importance, might vitiate the whole proceedings; e. g., in 1221 Richard Rodeknight of Itchington, charged Richard, Guy's son, with causing the burning of his house. At the County Court he had charged him with burning the house himself, and as the charge before the justice in Eyre was of having procured the burning, the appeal was quashed. In those days *Qui facit pro alium facit per se* was not universally accepted; many a superior escaped while his subordinate suffered the extreme rigor of the law. It may be said that the quashing of the appeal did not prevent the charge being enquired into by a jury. The jury, however, found that Richard Rodeknight's own son had burnt the house.

In the present case John of Marston charged as proving the *odium et athia,* the alleged fact that Geoffrey Hopeshot had been charged with stealing the articles he, John, now was accused of stealing, or some of them.

The earl's bailiff was called on for his reply. He said that while the earl did give the marriage of Alice to John of Littlebury, he did not give that of Maud; he retained the wardship of Maud and caused his bailiffs to place her in the Abbey at Sopwell, and there she stayed until she was stolen in manner aforesaid. He demands judgment, as John of Marston had admitted that he married her without permission of her lord and denies that she ever was married to John of Marston until after he had taken her away by force.

He asserted that Stephen was not a hired champion; that he never was "the man" of any one but the earl, and that the battle he fought was by the earl's command for one of the earl's knights, Adam of Port.

He then makes a departure, and claims that it was from Philip Boiard, the other "man," that the articles were stolen; and Philip offers to fight John of Marston on that issue. Philip also denies that the bedclothes were taken in the way John had described, and denies that Geoffrey ever was taken *"cum pannis, sicut predicum est."*

John of Marston was then asked by what warrant he married Maud, and he said "by Maud's free will." He challenges the allegation of the complainant that Maud had not been given by the earl to John of Littlebury; and in that view claims that he did not take her

from the earl's custody, but that she escaped from the custody of John of Littlebury who wanted to make her a nun.

The bailiff reiterates that she was in the Earl's wardship when he left on the crusade, and adds, that having great confidence in John of Littlebury and his wife, the earl entrusted Maud to them that they might place her in the Abbey of Sopwell for safe keeping; and that this is so is very evident because *"idem Johannes nichil [nihil] clamat in illa custodia."*

It was by this time plain that Maud had been in charge of John of Littlebury, whether as a mere bailiff of the earl as the complainant alleged, or as grantee of her *maritagium* as the accused set up. If the latter were the case, the earl had no cause of action. The judges thought it inadvisable to proceed in the absence of John of Littlebury, and accordingly they directed him to be summoned to declare what right he had in the wardship of Maud and if she was in his custody how she went out of his custody. In the meantime John of Marston was clearly wrong; he had married some one's ward without warrant, and must answer for the wrong. He was accordingly ordered to find sureties that he would "stand to right." He gave two, Richard of Marston and Reginald Taillebois. Had he failed to give good and substantial security the practice would probably have been followed; *"Plegii ejus gaola,"* (his pledges the gaol).

Well authenticated records enable us to say what would be the subsequent proceedings.

If Philip Boiard press his claim and it be determined that it is not taken for spite, a battle will be awarded and a day set. A piece of ground sixty feet square is measured out, appellor and appellee are armed with a staff an ell long; they take the oath to the justice of their claim and against sorcerous protection, and fight from sunrise till one be killed (not a common occurrence), or one pronounce the horrible word "craven," or till the stars appear in the evening—the judges in their robes sitting by to see that all is fair and legal. Indeed, sometimes the king himself desired to see the fight. The year after he came to the throne John commanded the Justices of the Bench that the duels which had been ordered between Ranulph of Launcells and Hugh of Stoddon and between William of Burnsland and Richard of Durham, both cases of robbery, be put before the king himself *"quia ea vult videre."* If either should be killed, Heaven had given judgment; if the accused be vanquished and pronounce the word "craven" to save his life, he is thereafter infamous, no *"liber et legalis homo,"* disqualified from sitting on a jury or giving evidence as a witness; and moreover he must answer in damages to the man he has wronged. If

it be the accused who fails, who cannot or will not fight longer, he will be adjudged to be hanged immediately; if the stars appear before the fight is ended, the appellee is acquitted.

Then if the robbery of the damsel (domicella) Maud be pursued, John of Littlebury will appear and state his case. If he assert and prove his wardship of Maud, William representing the earl will be nonsuited, the earl having no claim; and William may be imprisoned and almost certainly will pay a fine to the king, being in mercy for a false appeal.

If, however, it be found that the earl remained entitled to the wardship of the damsel, the next question to be determined will be the truth as to the marriage. If John of Marston and Maud duly intermarried in the nunnery of Sopwell, his offense is light, he had a right to his wife, even if she did not run to him of her own motion. But he must pay the damages suffered by the earl; he has given pledges. If they did not so marry, but William is right when he says that there was no marriage until after the fracas on the king's highway between St. Albans and Hedge Farm, John of Marston may find his case rather more unhappy. Then the question of the initiative of Maud in effecting a change of custody would become material. But it is idle guessing what was the outcome, *cetera desunt valde deflenda.*

This story which gives a vivid impression of the condition of matters in England seven centuries ago, is to be found in a publication of the Selden Society, "Select Pleas of the Crown, Vol. 1," edited by the late F. W. Maitland; and the volume contains dozens of cases quite as interesting and many more extraordinary. And yet they tell us "Law is dry."